

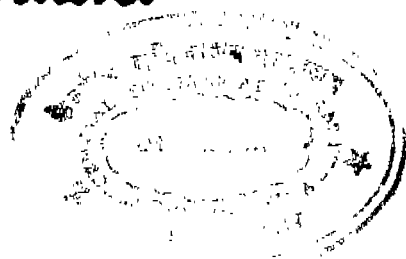


भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

भाग II — खण्ड 2
PART II — Section 2

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY



सं 16] नई दिल्ली, शुक्रवार, अक्टूबर 29, 1999 / कार्तिक 7, 1920
No. 16] NEW DELHI, FRIDAY, OCTOBER 29, 1999 / KARTIKA 7, 1920

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 29th October, 1999.

BILL No. 72 OF 1999

THE PREVENTION OF MONEY-LAUNDERING BILL, 1999

A Bill to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

WHEREAS the Political Declaration and Global Programme of Action, annexed to the resolution S-17/2 was adopted by the General Assembly of the United Nations at its seventeenth special session on the twenty-third day of February, 1990;

AND WHEREAS the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1998 calls upon the Member States to adopt national money-laundering legislation and programme;

AND WHEREAS it is considered necessary to implement the aforesaid resolution and the Declaration;

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Prevention of Money-laundering Act, 1999.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Short title,
extent and
commence-
ment.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "Adjudicating Authority" means an Adjudicating Authority appointed under sub-section (1) of section 6;

(b) "Appellate Tribunal" means the Appellate Tribunal established under section 24;

(c) "Assistant Director" means an Assistant Director appointed under sub-section (1) of section 48;

(d) "attachment" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;

(e) "banking company" shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934;

2 of 1934.

(f) "Bench" means a Bench of the Appellate Tribunal;

(g) "Chairperson" means the Chairperson of the Appellate Tribunal;

(h) "Deputy Director" means a Deputy Director appointed under sub-section (1) of section 48;

(i) "Director" or "Additional Director" or "Joint Director" means a Director or Additional Director or Joint Director, as the case may be, appointed under sub-section (1) of section 48;

(j) "financial institution" shall have the same meaning as assigned to it under clause (c) of section 45-I of the Reserve Bank of India Act, 1934;

2 of 1934.

(k) "intermediary" means a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992;

15 of 1992.

(l) "Member" means a Member of the Appellate Tribunal and includes the Chairperson;

(m) "money-laundering" has the meaning assigned to it in section 3;

(n) "notification" means a notification published in the Official Gazette;

(o) "person" includes—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;

(p) "prescribed" means prescribed by rules made under this Act;

(q) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;

(r) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

(s) "records" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;

(t) "Schedule" means the Schedule to this Act;

(u) "scheduled offence" means an offence specified in the Schedule;

(v) "Special Court" means a Court of Session designated as Special Court under sub-section (1) of section 42;

(w) "transfer" includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;

(x) "value" means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.

(2) Any reference, in this Act or the Schedule, to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provisions of the corresponding law, if any, in force in that area.

CHAPTER II

OFFENCE OF MONEY-LAUNDERING

3. Whoever—

(a) acquires, owns, possesses or transfers any proceeds of crime; or

(b) knowingly enters into any transaction which is related to proceeds of crime either directly or indirectly; or

(c) conceals or aids in the concealment of the proceeds of crime,

commits the offence of money-laundering.

Offence of
money-
laundering.

4. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees:

Punishment for
money-
laundering.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified in Part IV of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.

CHAPTER III

ATTACHMENT, ADJUDICATION AND CONFISCATION

5. (1) Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, has reason to believe, on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime;

(b) such person has been charged of having committed a scheduled offence;
and

(c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

Attachment of
property
involved in
money-
laundering.

he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule:

Provided that no such order of attachment shall be made unless, in relation to an offence under—

(i) Part I, Part II, Part III or Part V of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or 2 of 1974.

(ii) Part IV of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985. 61 of 1985.

(2) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 7, whichever is earlier.

(3) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.—For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(4) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

Adjudicating
Authority.

6. (1) The Central Government shall, by notification, appoint one or more persons not below the rank of Joint Secretary to the Government of India as Adjudicating Authority or Adjudicating Authorities to exercise the jurisdiction, powers and authority conferred on an Adjudicating Authority by or under this Act.

(2) The Central Government shall also specify in the notification referred to in sub-section (1) the matters and places in relation to which the Adjudicating Authority may exercise jurisdiction.

Adjudication.

7. (1) On receipt of a complaint under sub-section (4) of section 5, or applications made under sub-section (3) of section 16 or under sub-section (9) of section 17, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3, he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized under section 16 or section 17, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him,

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized under section 16 or section 17 and record a finding to that effect, such attachment or retention of the seized property or record shall—

(a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and

(b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final.

(4) Where the provisional order of attachment made under sub-section (1) of section has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the attached property.

(5) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property or retention of the seized property or record under sub-section (3) shall cease to have effect.

(6) Where the attachment or retention of any property or retention of the seized property or record becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity to the person concerned, make an order confiscating such property.

8. Where an order of confiscation has been made under sub-section (6) of section 7 in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances:

Vesting of
property in
Central
Government.

Provided that where the Adjudicating Authority, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, or seized under Chapter V is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest:

Provided further that nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

9. (1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government of India) as it thinks fit, to perform the functions of an Administrator.

Management of
properties con-
fiscated under
this Chapter.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (6) of section 7 in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under section 8.

10. (1) The Adjudicating Authority shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

Power regard-
ing summons,
production of
documents and
evidence, etc.

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(2) All the persons so summoned shall be bound to attend in person or through authorised agents, as the Adjudicating Authority may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(3) Every proceeding under this section shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

45 of 1860.

CHAPTER IV

OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

Banking
companies,
financial
institutions and
intermediaries
to maintain
records.

11. (1) Every banking company, financial institution and intermediary shall—

(a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;

(b) furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed;

(c) verify and maintain the records of the identity of all its clients, in such manner as may be prescribed.

(2) The records referred to in sub-section (1) shall be maintained for a period of five years from the date of cessation of the transactions between the clients and the banking company or financial institution or intermediary, as the case may be.

Powers of
Director to
impose fine.

12. (1) The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in sub-section (1) of section 11 and may make such inquiry or cause such inquiry to be made, as he thinks fit.

(2) If the Director, in the course of any inquiry, finds that a banking company, financial institution or an intermediary or any of its officers has failed to maintain, or, retain records in accordance with the provisions contained in section 11, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees.

(3) The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

13. Save as otherwise provided in section 12, the banking companies, financial institutions, intermediaries and their officers shall not be liable to any civil proceedings against them for furnishing information under clause (b) of sub-section (1) of section 11.

No civil proceedings against banking companies, financial institutions, etc., in certain cases.

14. The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 11 for the purpose of implementing the provisions of this Act.

Procedure and manner of furnishing information by banking company, financial institution and intermediary.

CHAPTER V

SUMMONS, SEARCHES AND SEIZURES, ETC.

15. (1) Notwithstanding anything contained in any other provisions of this Act, where an authority has reason to believe that an offence under section 3 has been committed, he may enter any place—

Power of survey.

(i) within the limits of the area assigned to him; or

(ii) in respect of which he is authorised for the purposes of this section by such other authority, who is assigned the area within which such place is situated,

at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, such act so as to,—

(i) afford him the necessary facility to inspect such records as he may require and which may be available at such place;

(ii) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein; and

(iii) furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceedings under this Act.

Explanation.—For the purposes of this sub-section, a place, where an act which constitutes the commission of the offence is carried on, shall also include any other place, whether any activity is carried on therein or not, in which the person carrying on such activity states that any of his records or any part of his property relating to such act are or is kept.

(2) An authority acting under this section may—

(i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom,

(ii) make an inventory of any property checked or verified by him, and

(iii) record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act.

16. (1) Where the Director, on the basis of information in his possession, has reason to believe that any person—

Search and seizure.

- (i) has committed any act which constitutes money-laundering, or
 - (ii) is in possession of any proceeds of crime involved in money-laundering,
- or
- (iii) is in possession of any records relating to money-laundering,

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
- (b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;
- (c) seize any record or property found as a result of such search;
- (d) place marks of identification on such record or make or cause to be made extracts or copies therefrom;
- (e) make a note or an inventory of such record or property;
- (f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

Provided that no search shall be conducted unless, in relation to an offence under—

(a) Part I, Part II, Part III or Part V of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or

2 of 1974.

(b) Part IV of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

61 of 1985.

(2) Where an authority, upon information obtained during survey under section 15, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

(3) The authority seizing any record or property under this section shall within a period of thirty days from such seizure, file an application, requesting for retention of such record or property, before the Adjudicating Authority.

Search of
persons.

17. (1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe that any person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act.

(2) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer superior in rank to him or a Magistrate:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest Gazetted Officer, superior in rank to him, or Magistrate's Court.

(3) If the requisition under sub-section (2) is made, the authority shall not detain the

person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the Gazetted Officer, superior in rank to him, or the Magistrate's Court.

(4) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.

(5) Before making the search under sub-section (1) or sub-section (4), the authority shall call upon two or more persons to attend and witness the search, and the search shall be made in the presence of such persons.

(6) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.

(7) No female shall be searched by any one excepting a female.

(8) The authority shall record the statement of the person searched under sub-section (1) or sub-section (4) in respect of the records or proceeds of crime found or seized in the course of the search:

Provided that no search of any person shall be made unless, in relation to an offence under—

2 of 1974. (a) Part I, Part II, Part III or Part V of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or

61 of 1985. (b) Part IV of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

(9) The authority seizing any record or property under sub-section (1) shall, within a period of thirty days from such seizure, file an application requesting for retention of such record or property, before the Adjudicating Authority.

18. (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has reason to believe that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

Power to arrest.

(2) Every person arrested under sub-section (1) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's Court.

19. (1) Where any property has been seized under section 16 or section 17, and the officer authorised by the Director in this behalf has reason to believe that such property is required to be retained for the purposes of adjudication under section 7, such property may be retained for a period not exceeding three months from the end of the month in which such property was seized.

Retention of property.

(2) On expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized unless the Adjudicating Authority permits retention of such property beyond the said period.

(3) The Adjudicating Authority, before authorising the retention of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 7.

(4) After passing the order of confiscation under sub-section (6) of section 7, the Adjudicating Authority shall direct the release of all properties other than the properties involved in money-laundering to the person from whom such properties were seized.

(5) Notwithstanding anything contained in sub-section (4), the Director or any officer authorised by him in this behalf may withhold the release of any property until filing of appeal under section 25 or forty-five days from the date of order under sub-section (4), whichever is earlier, if he is of the opinion that such property is relevant for the proceedings before the Appellate Tribunal.

Retention of records.

20. (1) Where any records have been seized under section 16 or section 17, and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, he may retain such records for a period not exceeding three months from the end of the month in which such records were seized.

(2) On expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized unless the Adjudicating Authority permits retention of such records beyond the said period.

(3) The Adjudicating Authority, before authorising the retention of such records beyond the period mentioned in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 7.

(4) After the passing of an order of confiscation under sub-section (6) of section 7, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(5) Notwithstanding anything contained in sub-section (4), the Director or any officer authorised by him in this behalf may withhold the release of any records until filing of appeal under section 25 or after forty-five days from the date of order under sub-section (4), whichever is earlier, if he is of the opinion that such records are relevant for the proceedings before the Appellate Tribunal.

Presumption as to records or property in certain cases.

21. (1) Where any records or property are or is found in the possession or control of any person in the course of a survey or a search, it shall be presumed that—

(i) such records or property belong or belongs to such person;

(ii) the contents of such records are true; and

(iii) the signature and every other part of such records which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a record, stamped, executed or attested, that it was executed or attested by the person by whom it purports to have been so stamped, executed or attested.

(2) Where any records have been received from any place outside India, duly authenticated by such authority or person and in such manner as may be prescribed, in the course of proceedings under this Act, the Special Court, the Appellate Tribunal or the Adjudicating Authority, as the case may be, shall—

(a) presume, that the signature and every other part of such record which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a record executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

22. Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under section 7, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority, be presumed that the remaining transactions form part of such inter-connected transactions.

Presumption in inter-connected transactions.

23. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Presumption of culpable mental state.

Explanation.—In this sub-section, "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when, its existence is established by a preponderance of probability.

CHAPTER VI

APPELLATE TRIBUNAL

24. The Central Government shall, by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority and the authorities under this Act.

Establishment of Appellate Tribunal.

25. (1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

Appeals to Appellate Tribunal.

(2) Any banking company, financial institution or intermediary aggrieved by any order of the Director made under sub-section (2) of section 12, may prefer an appeal to the Appellate Tribunal.

(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1) or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be

made by it to dispose of the appeal finally within six months from the date of filing of the appeal.

Composition,
etc., of
Appellate
Tribunal.

26. (1) The Appellate Tribunal shall consist of a Chairperson and two other Members.

(2) Subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson with one or two Members as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

Qualifications
for appoint-
ment.

27. (1) A person shall not be qualified for appointment as Chairperson unless he is or has been a Judge of the Supreme Court or of a High Court.

(2) A person shall not be qualified for appointment as a Member unless he—

(a) is or has been a Judge of a High Court; or

(b) has been a Member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years; or

(c) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent post in that Service for at least three years; or

(d) has been a member of the Indian Economic Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years.

(3) No sitting Judge of the Supreme Court or of a High Court shall be appointed under this section except after consultation with the Chief Justice of India.

Term of office.

28. The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office:

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of sixty-eight years;

(b) in the case of any other Member, the age of sixty-five years.

29. The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed:

Conditions of service.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or any other Member shall be varied to his disadvantage after appointment.

30. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Vacancies.

31. (1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Resignation and removal.

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity, after an inquiry made by a person appointed by the President in which such Chairperson or any other Member concerned had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

32. (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

Member to act as Chairperson in certain circumstances.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

33. (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as that Government may think fit.

Staff of Appellate Tribunal.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

34. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

Procedure and powers of Appellate Tribunal.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:— 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office; 1 of 1872.

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it *ex parte*;

(h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(i) any other matter, which may be, prescribed by the Central Government.

(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973. 45 of 1860.
2 of 1974.

Distribution of
business
amongst
Benches.

35. Where any Benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Power of
Chairperson to
transfer cases.

36. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench.

Decision to be
by majority.

37. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

38. (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of authorised representative of his choice to present his case before the Appellate Tribunal.

Right of appellant to take assistance of authorised representative and of Government, etc., to appoint presenting officers.

43 of 1961.

Explanation.—For the purposes of this sub-section, the expression “authorised representative shall have the same meaning, as assigned to it under sub-section (2) of Section 288 of the Income-tax Act, 1961.

(2) The Central Government or the Director may authorise one or more authorised representatives or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

39. The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Director and the officers subordinate to him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1960.

Members, etc., to be public servants.

40. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Civil court not to have jurisdiction.

41. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:

Appeal to High Court.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.—For the purposes of this section, “High Court” means—

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

CHAPTER VII

SPECIAL COURTS

42. (1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4 by notification designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Special Courts.

Explanation.—In this sub-section, “High Court” means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court may also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

2 of 1974.

43. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

2 of 1974.

Offences triable by Special Courts.

(a) the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed; or

(b) a Special Court may, upon perusal of police report of the facts which constitute an offence under this Act or upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial.

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 42.

2 of 1974.

Offences to be
cognizable and
non-bailable.

44. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

2 of 1974.

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for a term of imprisonment of more than three years under this Act shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person who is under the age of sixteen years is a woman or is sick or infirm, may be released on bail, if the special court so directs;

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

(2) The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

2 of 1974.

Application of
the Code of
Criminal
Procedure, 1973
to proceedings
before Special
Court.

45. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:

2 of 1974.

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

2 of 1974.

Appeal and
revision.

46. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

2 of 1974.

CHAPTER VIII

AUTHORITIES

Authorities
under the Act.

47. There shall be the following classes of authorities for the purposes of this Act, namely:—

(a) Director or Additional Director or Joint Director,

(b) Deputy Director,

(c) Assistant Director, and

(d) such other class of officers as may be appointed for the purposes of this Act.

48. (1) The Central Government may appoint such persons as it thinks fit to be authorities for the purposes of this Act.

Appointment and powers of authorities and other officers.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director appointed under that sub-section to appoint other authorities below the rank of an Assistant Director.

(3) Subject to such conditions and limitations as the Central Government may impose, an authority may exercise the powers and discharge the duties conferred or imposed on it under this Act.

5 of 1908. **49. (1) The Director shall, for the purposes of section 12, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—**

Powers of authorities regarding summons, production of documents and to give evidence, etc.

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company, financial institution or a company, and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

45 of 1860. **(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.**

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not—

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director.

50. (1) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to such authorities by or under this Act or the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities.

Jurisdiction of authorities.

(2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely:—

(a) territorial area;

(b) classes of persons;

(c) classes of cases; and

(d) any other criterion specified by the Central Government in this behalf.

Power of
Central
Government to
issue
directions, etc.

51. The Central Government may, from time to time, issue such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow such orders, instructions and directions of the Central Government:

Provided that no such orders, instructions or directions shall be issued so as to—

(a) require any authority to decide a particular case in a particular manner; or

(b) interfere with the discretion of the Adjudicating Authority in exercise of his functions.

Empowerment
of certain
officers.

52. The Central Government may, by a special or general order, empower any officer of the Central Government or of a State Government to act as an authority under this Act.

Certain officers
to assist in
inquiry, etc.

53. The following officers are hereby empowered and required to assist the authorities in the enforcement of this Act, namely:—

(a) officers of the Customs and Central Excise Departments;

(b) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985;

61 of 1985.

(c) income-tax authorities under sub-section (1) of section 117 of the Income-tax Act, 1961;

43 of 1961.

(d) officers of the stock exchange recognised under section 4 of the Securities Contracts (Regulation) Act, 1956;

42 of 1956.

(e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934;

2 of 1934.

(f) officers of Police;

(g) officers of enforcement appointed under section 4 of the Foreign Exchange Regulation Act, 1973;

46 of 1973.

(h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

15 of 1992.

(i) officers of any other body corporate constituted or established under a Central Act or a State Act;

(j) such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf.

CHAPTER IX

RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND CONFISCATION OF PROPERTY

Definitions.

54. In this Chapter, unless the context otherwise requires,—

(a) "contracting State" means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;

(b) "identifying" includes establishment of a proof that the property was derived from, or used in the commission of an offence under section 3;

(c) "tracing" means determining the nature, source, disposition, movement, title or ownership of property.

55. (1) The Central Government may enter into an agreement with the Government of any country outside India for—

Agreements with foreign countries.

(a) enforcing the provisions of this Act;

(b) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act,

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

2 of 1974

56. (1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—

Letter of request to a contracting State in certain cases.

(i) examine facts and circumstances of the case,

(ii) take such steps as the Special Court may specify in such letter of request, and

(iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation.

57. Where a letter of request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Court or to any authority under the Act as it thinks fit for execution of such request in accordance with the provisions of this Act or as the case may be, any other law for the time being in force.

Assistance to a contracting State in certain cases.

58. (1) Where a Special Court, in relation to an offence punishable under section 4, desires that—

Reciprocal arrangements for processes and assistance for transfer of accused persons.

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce a document or other thing, or to produce it, or

(d) a search-warrant,

issued by it shall be served or executed at any place in any contracting State, it shall send such summons or warrant in duplicate in such form, to such Court, Judge or Magistrate through such authorities, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed.

(2) Where a Special Court, in relation to an offence punishable under section 4 has received for service or execution—

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or
- (d) a search warrant,

issued by a Court, Judge or Magistrate in a contracting State, it shall cause the same to be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where—

- (i) a warrant of arrest has been executed, the person arrested shall, so far as possible be dealt with in accordance with the procedure specified under section 18;
- (ii) a search warrant has been executed, the things found in this search shall, so far as possible be dealt with in accordance with the procedure specified under sections 16 and 17:

Provided that in a case where a summon or search warrant received from a contracting State has been executed, the documents or other things produced or things found in the search shall be forwarded to the Court issuing the summons or search warrant through such authority as the Central Government may, by notification, specify in this behalf.

(3) Where a person transferred to a contracting State pursuant to sub-section (2) is a prisoner in India, the Special Court or the Central Government may impose such conditions as that Court or Government deems fit.

(4) Where the person transferred to India pursuant to sub-section (1) is a prisoner in a contracting State, the Special Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

Attachment
seizure and
confiscation,
etc. of property
in a contract-
ing State or
India.

59. (1) Where the Director has made an order for attachment of any property under section 5 or where an Adjudicating Authority has made an order confirming such attachment or confiscation of any property under section 7, and such property is suspected to be in a contracting State, the Special Court, on an application by the Director or the Administrator appointed under sub-section (1) of section 9, as the case may be, may issue a letter of request to a court or an authority in the contracting State for execution of such order.

(2) Where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting attachment or confiscation of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence under section 3 committed in that contracting State, the Central Government may forward such letter of request to the Director, as it thinks fit, for execution in accordance with the provisions of this Act.

(3) The Director shall, on receipt of a letter of request under section 57 or section 58, direct any authority under this Act to take all steps necessary for tracing and identifying such property.

(4) The steps referred to in sub-section (3) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.

(5) Any inquiry, investigation or survey referred to in sub-section (4) shall be carried out by an authority mentioned in sub-section (3) in accordance with such directions issued in accordance with the provisions of this Act.

(6) The provisions of this Act relating to attachment, adjudication, confiscation and vesting of property in Central Government contained in Chapter III and survey, searches and seizures contained in Chapter V shall apply to the property in respect of which letter of request is received from a court or contracting State for attachment or confiscation of property.

60. Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf.

Procedure in respect of letter of request.

CHAPTER X

MISCELLANEOUS

61. Any authority or officer exercising powers under this Act or any rules made thereunder, who,—

Punishment for vexatious search.

(a) without reasonable grounds of suspicion, searches or causes to be searched any building or place; or

(b) vexatiously detains or searches or arrests any person,

shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.

62. (1) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.

Punishment for false information or failure to give information, etc.

(2) If any person,—

(a) being legally bound to state the truth of any matter relating to an offence under section 3, refuses to answer any question put to him by an authority in the exercise of its powers under this Act; or

(b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an authority may legally require to sign; or

(c) to whom a summon is issued under section 49 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce books of account or documents at the place or time,

he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure.

(3) No order under this section shall be passed by an authority referred to in sub-section (2) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

63. No court shall take cognizance of any offence under section 61 or sub-section (1) of section 62 except with the previous sanction of the Central Government.

Cognizance of offences.

2 of 1974.

64. The provisions of the Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

Code of Criminal Procedure, 1973 to apply.

65. The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to—

Disclosure of information.

(i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985; or

61 of 1985.

(ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify, by notification in the Official Gazette, in this behalf,

any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority, so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.

Bar of suits in civil courts.

66. No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under this Act.

Notice, etc., not to be invalid on certain grounds.

67. No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Recovery of fines.

68. Where any fine imposed on any person under section 12 or section 62 is not paid within six months from the day of imposition of fine, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

13 of 1961.

Offences by companies.

69. (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(i) "company" means any body corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

Act to have overriding effect.

70. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Continuation of proceedings in the event of death or insolvency.

71. (1) Where—

(a) any property of a person has been attached under section 7 and no appeal against the order attaching such property has been preferred; or

(b) any appeal has been preferred to the Appellate Tribunal, and—

(i) in a case referred to in clause (a), such person dies or is adjudicated an insolvent before preferring an appeal to the Appellate Tribunal; or

(ii) in a case referred to in clause (b), such person dies or is adjudicated an insolvent during the pendency of the appeal,

then, it shall be lawful for the legal representatives of such person or the official assignee or the official receiver, as the case may be, to prefer an appeal to the Appellate Tribunal or as the case may be, to continue the appeal before the Appellate Tribunal, in place of such person and the provisions of section 25 shall, so far as may be, apply, or continue to apply, to such appeal.

(2) Where—

(a) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High Court under section 41; or

(b) any such appeal has been preferred to the High Court,—

then—

(i) in a case referred to in clause (a), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court, or

(ii) in a case referred to in clause (b), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court,

then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provision of section 41 shall, so far as may be, apply or continue to apply to such appeal.

(3) The powers of the official assignee or the official receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Presidency-towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be.

3 of 1909.
5 of 1920.

72. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make
rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which records referred to in this Act may be maintained;

(b) the manner in which and the conditions subject to which the properties confiscated may be received and managed under sub-section (2) of section 9;

(c) the additional matters in respect of which the Adjudicating Authority may exercise the powers of a civil court under clause (f) of sub-section (1) of section 10;

(d) the nature and value of transactions in respect of which records shall be maintained under clause (a) of sub-section (1) of section 11;

(e) the time within which the information of transactions under clause (b) of sub-section (1) of section 11 shall be furnished.

(f) the manner in which records shall be verified and maintained by banking companies, financial institutions and intermediaries under clause (c) of sub-section (1) of section 11;

(g) the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 11 as required under section 14;

(h) the rules relating to search and seizure under sub-section (1) of section 16;

(i) the manner in which records authenticated outside India may be received under sub-section (2) of section 21;

(j) the form of appeal and the fee for filing such appeal, under sub-section (3) of section 25;

(k) the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under section 29;

(l) the salaries and allowances and the conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 33;

(m) the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of section 34;

(n) the additional matters in respect of which the authorities may exercise powers of a civil court under clause (f) of sub-section (1) of section 49;

(o) the rules relating to impounding and custody of records under sub-section (5) of section 49;

(p) any other matter which is required to be, or may be, prescribed.

Rules to be laid
before Parliament.

73. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to
remove
difficulties.

74. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See section 2(t)]

PART I

OFFENCES UNDER THE INDIAN PENAL CODE

Section	Description of offence
121	Waging, or attempting to wage war or abetting waging of war, against the Government of India.
121A	Conspiracy to commit offences punishable by section 121 against the State.
302	Murder.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with the intention of causing death.
307	Attempt to murder.
308	Attempt to commit culpable homicide.
327	Voluntarily causing hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.
329	Voluntarily causing grievous hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.
364A	Kidnapping for ransom, etc.
384 to 389	Offences relating to extortion.
392 to 402	Offences relating to robbery and dacoity.
467	Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money, etc.
489A	Counterfeiting currency notes or bank notes.
489B	Using as genuine, forged or counterfeit currency notes or bank notes.

PART II

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

Section	Description of offence
5	Procuring, inducing or taking person for the sake of prostitution.
6	Detaining a person in premises where prostitution is carried on.
8	Seducing or Soliciting for purpose of prostitution.
9	Seduction of a person in custody.

PART III

OFFENCES UNDER THE ARMS ACT, 1959

Section	Description of offence
25	<p>To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5 of the Arms Act, 1959.</p> <p>To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959.</p> <p>Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc.</p> <p>Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas.</p> <p>Other offences specified in section 25.</p>
26	<p>To do any act in contravention of any provisions of section 3, 4, 10 or 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act.</p> <p>To do any act in contravention of any provisions of section 5, 6, 7 or 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act.</p> <p>Other offences specified in section 26.</p>
27	Use of arms or ammunitions in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959.
28	Use and possession of fire arms or imitation fire arms in certain cases.
29	Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.
30	Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder.

PART IV

OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

Section	Description of offence
15	Contravention in relation to poppy straw.
18	Contravention in relation to opium poppy and opium.
20	Contravention in relation to cannabis plant and cannabis.
22	Contravention in relation to psychotropic substances.
23	Illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances.
24	External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
25A	Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985.
27A	Financing illicit traffic and harbouring offenders.
29	Abetment and criminal conspiracy.

PART V

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

Section	Description of offence
7	Public servant taking gratification other than legal remuneration in respect of an official Act.
8	Taking gratification in order, by corrupt or illegal means, to influence public servant.
9	Taking gratification for exercise of personal influence, with public servant.
10	Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.

STATEMENT OF OBJECTS AND REASONS

It is being realised, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:—

(a) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.

(b) the Basle Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money-laundering.

(c) the Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money-laundering. The recommendations were classified under various heads. Some of the important heads are—

(i) declaration of laundering of monies carried through serious crimes a criminal offence;

(ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;

(iii) confiscation of the proceeds of crime;

(iv) declaring money-laundering to be an extraditable offence; and

(v) promoting international co-operation in investigation of money-laundering.

(d) the Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/2 of 23rd February, 1990, *inter alia*, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.

(e) the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998 has made another declaration regarding the need to combat money-laundering. India is a signatory to this declaration.

2. In view of an urgent need for the enactment of a comprehensive legislation *inter alia* for preventing money-laundering and connected activities confiscation of proceeds of crime, setting up of agencies and mechanisms for co-ordinating measures for combating money-laundering, etc., the Prevention of Money-laundering Bill, 1998 was introduced in the Lok Sabha on the 4th August, 1998. The Bill was referred to the Standing Committee on Finance, which presented its report on the 4th March, 1999 to the Lok Sabha. The recommendations of the Standing Committee accepted by the Central Government are that (a) the expressions "banking company" and "person" may be defined; (b) in Part I of the Schedule under Indian Penal Code the word offence under section 477A relating to

falsification of accounts should be omitted; (c) 'knowingly' be inserted in clause 3(b) relating to the definition of money-laundering; (d) the banking companies financial institutions and intermediaries should be required to furnish information of transactions to the Director instead of Commissioner of Income-tax; (e) the banking companies should also be brought within the ambit of clause II relating to obligations of financial institutions and intermediaries; (f) a definite time-limit of 24 hours should be provided for producing a person about to be searched or arrested person before the Gazetted Officer or Magistrate; (g) the words "unless otherwise proved to the satisfaction of the authority concerned" may be inserted in clause 22 relating to presumption on inter-connected transactions; (h) vacancy in the office of the Chairperson of an Appellate Tribunal, by reason of his death, resignation or otherwise, the senior-most member shall act as the Chairperson till the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill the vacancy, enters upon his office; (i) the appellant before the Appellate Tribunal may be authorised to engage any authorised representative as defined under section 288 of the Income-tax Act, 1961; (j) the punishment for vexatious search and for false information may be enhanced from three months imprisonment to two years imprisonment, or fine of rupees ten thousand to fine of rupees fifty thousand or both; (k) the word 'good fatih' may be incorporated in the clause relating to Bar of legal proceedings. The Central Government have broadly accepted the above recommendations and made provisions of the said recommendations in the Bill.

3. In addition to above recommendations of the standing committee the Central Government proposes to (a) relax the conditions prescribed for grant of bail so that the Court may grant bail to a person who is below sixteen years of age, or woman, or sick or infirm. (b) levy of the for default of non-compliance of the issue of summons, etc. (c) make provisions for having reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property so as to facilitate the transfer of funds involved in money-laundering kept outside the country and extradition of the accused persons from abroad.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

YASHWANT SINHA.

The 25th October, 1999.

Notes on clauses

Clause 3 proposes to define the offence of money-laundering.

The term "money-laundering" is sought to be defined in an exhaustive manner. Whoever acquires, owns, possesses or transfers any proceeds of crime; or knowingly enters into any transaction which is related to proceeds of crime either directly or indirectly or conceals or aids in the concealment of the proceeds or gains of crime within India or outside India commits the offence of money-laundering. The essential ingredients of this definition are that:—

- (i) a crime has been committed;
- (ii) there are proceeds of or gains from the crime; and
- (iii) there is a transaction in respect of the proceeds of the gains.

Clause 4 seeks to provide punishment for money-laundering. It is proposed that the offence shall carry punishment of rigorous imprisonment for a period of not less than three years but not more than seven years and fine up to five lakh rupees. The maximum punishment may extend to ten years rigorous imprisonment instead of seven years rigorous imprisonment, where the proceeds of crime involved in money-laundering relate to an offence specified in Part IV of the Schedule.

Clause 5 seeks to provide for attachment of property involved in money-laundering. The Director is sought to be empowered to attach the property provided that he has reason to believe that a person is in possession of property involved in money-laundering or he is dealing in such property. The violations of the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 constitute the most serious offences under the proposed Bill and India has international obligations in this regard. Therefore, the Director is sought to be empowered to attach the laundered property in drug related cases soon after the case regarding the offence is sent by the police officer or a complaint is filed before the court for taking cognizance of the offence. However, in other cases, some safeguards need to be incorporated in the proposed legislation. It is proposed that in such cases, the attachment may be made only after, based on the outcome of the investigations, a report has been forwarded under section 173 of the Code of Criminal Procedure, 1973 before the competent Magistrate. It is proposed that the attachment shall remain in force for a period not exceeding ninety days or the period ending on the date of order of adjudication made in respect of the property representing the proceeds of crime, whichever is earlier. The attachment shall, however, not prevent the person interested in the enjoyment of the property from such enjoyment. It is also proposed that the Director or any other officer who provisionally attaches any property under the proposed Act shall within a period of thirty days from such attachment file a complaint before the Adjudicating Authority.

Clause 6 proposes to set-up Adjudicating Authorities so as to adjudicate in a quasi-judicial manner whether the attached property is involved in money-laundering or not. It is sought that the Central Government shall appoint one or more persons not below the rank of Joint Secretary to the Government of India as Adjudicating Authorities and specify the matters and places where they may exercise jurisdiction.

Clause 7 proposes to lay down the procedure for adjudication. After filing of a complaint or application by the Director or any other officer before the Adjudicating Authority, if the Adjudicating Authority has reason to believe that any person has committed an offence of money-laundering, he may serve a notice of minimum thirty days on such a person asking him to indicate the sources of his income, earning, or assets by which he has acquired the attached or seized property and to show-cause as to why all or any of such acquired properties may not be declared to be properties involved in money-laundering and confiscated by the Central Government. It is also proposed to be provided that where the attached or seized property or record is held by a person on behalf of any other person then a copy of such notice shall also be served upon the other person. Where the property is held jointly by more than one person, then such notice shall be served to the person

holding the property. Sub-clause (2) proposes that the Adjudicating Authority shall after considering the reply, if any, to the notice issued by it, and after hearing the aggrieved person and the Director or any other authorised officer and after taking into account all relevant materials placed on record, record a finding whether the attached or seized properties are involved in money-laundering or not. It is sought to be provided that where the property is claimed by any other person to whom the notice is issued then such person should also be given an opportunity of being heard to prove that the property is not involved in money-laundering. Sub-clause (3) seeks to provide that if the Adjudicating Authority adjudicates that the property is involved in money-laundering, he shall confirm in writing, the attachment or the retention of seized property or record. Thereafter the attachment or retention shall continue during the pendency of the proceedings relating to any scheduled offence before a Court and shall become final after the guilt of the person is proved in the trial Court and the order of such trial Court becomes final. Sub-clause (4) seeks to provide that where the provisional order of attachment is confirmed by the Adjudicating Authority then the Director or any other authorised officer shall forthwith take the possession of the attached property. Sub-clause (5) provides that where the concerned person is acquitted on the conclusion of trial for any scheduled offence, then the attachment or seizure of property shall cease to have effect. Sub-clause (6) provides that once a crime relating to a property is proved in the competent court of law, the Adjudicating Authority shall pass an order in writing confiscating such property after hearing the concerned persons.

Clause 8 seeks to provide that once a crime relating to a property is proved in the competent court of law, the Adjudicating Authority shall pass an order in writing confiscating such property after hearing the concerned persons. It is further sought to be provided that if the Adjudicating Authority is of the opinion that any encumbrance of the property or lease hold interest has been created with a view to defeat the provisions of Chapter III the Adjudicating Authority may declare such encumbrance or lease hold interest to be void. However, such an order may be passed only after giving the person interested in the property an opportunity of being heard. It is proposed to be further provided that nothing in clause 8 shall discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

Clause 9 proposes to make provisions for management of properties confiscated under the proposed Act. Sub-clause (1) seeks to authorise the Central Government to appoint by notification in the Official Gazette officers not below the rank of a Joint Secretary to the Government to perform the functions of an Administrator. Sub-clause (2) proposes that the Administrator so appointed shall receive and manage the confiscated property according to conditions that may be prescribed by rules. Sub-clause (3) seeks to provide that the Administrator shall also take such measures as the Central Government may direct to dispose of the property which is vested in the Central Government under clause 8.

Clause 10 seeks to introduce provisions conferring power regarding summons, production of documents, giving evidence, etc., on the Adjudicating Authority. As per sub-clause (1), it is proposed that the Adjudicating Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of discovery and inspection, enforcing the attendance of any person, compelling the production of records, receiving evidence on affidavits, issuing commissions for examination of witnesses and documents and any other matters which may be prescribed. It is proposed that the persons so summoned shall be bound to attend in person or through authorised agents and shall also be bound to state the truth upon any subject respecting which they are examined and make statements or produce the required documents. Sub-clause (3) proposes that every proceeding under this clause shall be deemed to be judicial proceedings within the meanings of sections 193 and 228 of the Indian Penal Code.

Clause 11 proposes to make it obligatory for every banking company, financial institution and intermediary to maintain a record of all such transactions or series of transactions, the nature and value of which may be prescribed by the Central Government.

It is also proposed that they would be required to furnish information in the prescribed time and manner of these transactions to the Director. The banking company financial institutions and intermediaries would also be required to verify and maintain the records of the identity of all its clients in the prescribed manner for a period of five years from the date of cessation of transaction between banking companies and clients, financial institutions and clients or intermediaries and clients.

Clause 12 proposes to empower the Director to impose a fine on the banking company, financial institution or intermediaries if the banking company financial institution or intermediaries has failed to maintain or retain records in accordance with the provisions of clause 11. The Director may levy a fine on such banking company financial institution or intermediaries of not less than rupees ten thousand but not exceeding one lakh rupees. A copy of such order levying the fine will be forwarded to every banking company financial institution or intermediaries or other person who is a party in the proceedings.

Clause 13 seeks to provide that the banking company, financial institutions, intermediaries and their officers will be provided immunity from any civil or criminal liability, under any existing law, arising out of disclosures of informations under clause 11.

Clause 14 seeks to authorise the Central Government, in consultation with the Reserve Bank of India to prescribe the procedures, etc., for reporting of the transactions.

Clause 15 seeks to empower the Assistant Director or the Deputy Director to carry out a survey of the premises in case where he has reason to believe that money-laundering is being carried on. The powers are similar to the powers granted to the Income-tax authorities under section 133A of the Income-tax Act, 1961. It also seeks to empower the officer authorised to conduct the survey to require any proprietor, employee or any other person who is attending to the matters at the place of survey to assist the officer in affording him the facility to inspect the required records, to check or verify the proceeds of crime or any transactions related to the proceeds of crime which may be found at the site of survey and to furnish the required information. In these proceedings, marks of identification may be placed on the records inspected or copies and extracts, etc., may be taken from the books and documents, and an inventory of cash and valuables may be drawn and the statements may be recorded.

Clause 16 empowers the Director to authorise search and seizure operations in a premises provided that he has reason to believe that any person has committed an act of money-laundering, or is in possession of money, bullion or valuables, etc., involved in money-laundering, or is in possession of records pertaining to money-laundering. The Director may authorise any officer subordinate to him to enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept, and to break open any lock where the keys are not available, to seize any record or property found as a result of such search, to place marks of identification on such records, take their extracts or copies, make a note or an inventory of such record or property and examine on oath any person who is found to be in possession or in control of any record or property.

It is further sought to be provided that such search may be authorised in drug related cases soon after the case regarding the offence is sent by the police officer or a complaint is filed by the designated officer before the court for taking cognizance of the offence. In other cases it is proposed that search may be authorised only after, based on the outcome of the investigations, a report has been forwarded under section 173 of the Code of Criminal Procedure, 1973 before the competent Magistrate.

It is further proposed vide sub-clause (2) that if in the course of survey it is found that evidence of money-laundering is available, which is likely to be tampered with, then the officer may seize the evidence on the footing that he has been authorised by the Director to carry out a search and seizure operation. However, he will have to record his

reasons for taking this action in writing and communicate the same along with the result of search to the Director immediately after the search.

It is further proposed vide sub-clause (3) that the authority shall make an application for retention of seized property or record, within thirty days of such seizure to the Adjudicating Authority.

Clause 17 proposes to confer the power of search of a person on an officer authorised in this behalf by the Central Government, if he has reason to believe that such person is in possession of or has secreted about his person any document, money, bullion, etc., which will be useful for any proceeding under the proposed legislation. Sub-clause (2) proposes that where an authority is about to search any person and that person so requires, then he shall take such person within twenty-four hours to the nearest Gazetted Officer superior in rank to him or to a Magistrate. Sub-clause (3) authorises the authority to detain the person until he can bring him before the Gazetted Officer superior in rank to him or to a Magistrate. Sub-clause (4) provides that if the Gazetted Officer or the Magistrate before whom such person is brought, sees no reasonable ground for search then he may discharge such person but otherwise direct that the search of such person may be made. Sub-clause (5) provides that before making a search of a person the authority shall call upon two or more persons to attend and witness the search. Sub-clause (6) provides that the authority shall prepare a list of records or properties seized in the course of the search and obtain the signatures of the witnesses on this list. Sub-clause (7) provides that no female shall be searched by anyone except another female. Sub-clause (8) proposes to provide that such a search may be authorised in drug related cases soon after the case regarding the offence is sent by the police officer or a complaint is filed before the court for taking cognizance of the offence. In other cases it is proposed that search may be authorised only after, based on the outcome of investigations, a report has been forwarded under section 173 of the Code of Criminal Procedure before the competent Magistrate.

It is further proposed vide sub-clause (9) that the authority shall make an application for retention of seized property or record, within thirty days of such seizure to the Adjudicating Authority.

Clause 18 proposes to empower the Director, the Deputy Director, the Assistant Director or any other authorised officer to arrest a person if he has reason to believe that the person is guilty of an offence under the proposed legislation. Necessary safeguards such as furnishing the grounds of arrest and production before the Judicial Magistrate or a Metropolitan Magistrate within twenty-four hours are also sought to be provided.

Clause 19 proposes to make provisions regarding retention of property seized in the course of search of premises or persons. The property seized during search of premises or search of persons, if required for adjudication can, generally speaking, be retained for a period not exceeding three months. If retention is required for a longer period, specific permission of the Adjudicating Authority has to be taken. Before giving such permission the Adjudicating Authority has to satisfy himself that the aforesaid assets are involved in money-laundering and they are required for adjudication. After the date of passing of the order of confiscation, the Adjudicating Authority shall direct the release of such assets which are not involved in money-laundering. However, the director is sought to be empowered under sub-clause (5) to retain the assets even beyond the date of order of adjudication where an appeal is filed against the order within forty-five days from the date of the order of the Adjudicating Authority.

Clause 20 proposes similar provisions in respect of retention of records seized during search under clause 16 or clause 17.

Clause 21 seeks to provide a presumption regarding records and property found in the course of search and seizure operations. It shall be presumed that the aforesaid belong to the person in whose possession or control the records or property were found. It shall also be presumed that the records contain the true account of the transactions mentioned therein. Further, in case a document is received in the prescribed manner from outside India, it shall be presumed that the handwriting and signatures, etc., are correct and that it has been properly recorded and conveyed, etc.

Clause 22 seeks to provide a presumption that where money-laundering involves two or more interconnected transactions and one or more such transaction is proved to be involved in money-laundering, then for the purposes of adjudication or confiscation, it shall be presumed that remaining transactions form part of such interconnected transactions unless proved otherwise.

Clause 23 seeks to provide the presumption regarding the existence of "mens-rea" being culpable mental state of the accused in civil and criminal proceedings but the accused will be at liberty to rebut this presumption as a defence.

Clause 24 seeks to authorise the Central Government to establish an Appellate Tribunal by notification to hear appeals against the orders of the Adjudicating Authority and the authorities under this Act.

Clause 25 seeks to provide that the Director or any person aggrieved may prefer an appeal to the Appellate Tribunal against orders of adjudication, orders levying fines and orders of retention of valuables and books, etc. Sub-clause (2) provides that an appeal may be preferred to the Appellate Tribunal by a banking company Financial Institution or an intermediary aggrieved by any order of the Director. Sub-clause (3) provides that the appeal is to be filed within forty-five days of receipt of the order. However, the Appellate Tribunal will be empowered to entertain an appeal beyond this statutory period on showing of good and sufficient reasons. Sub-clause (4) proposes that the Appellate Tribunal after hearing the parties, may pass such orders as it thinks fit. Sub-clause (5) proposes that the Appellate Tribunal shall send a copy of every order passed by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director. Sub-clause (6) proposes that the Appellate Tribunal shall deal with the appeal filed before it as expeditiously as possible and endeavour to dispose it in six months.

Clause 26 details the composition of the Appellate Tribunal. It is sought to be provided that the Appellate Tribunal shall have a Chairperson and two other Members. Sub-clause (2) proposes that the jurisdiction of the Appellate Tribunal may be exercised by its benches which may be constituted by its Chairperson with one or two members. It is proposed that the benches of the Appellate Tribunal shall ordinarily sit in New Delhi or at such other places as may be notified by the Central Government in consultation with the Chairperson. It is also sought to be provided that the Central Government may notify the area of jurisdiction of each Bench of Appellate Tribunal. Sub-clause (3) proposes that the Chairperson may transfer a member from one Bench to another. Sub-clause (4) proposes that if at any stage of the hearing of any case it appears to the Chairperson or to the Member that the case ought to be heard by a Bench consisting of two members the case may be transferred accordingly by the Chairperson.

Clause 27 proposes to detail the qualifications for appointment of Chairpersons and Members of the Appellate Tribunal. The Chairperson shall be a sitting or retired Judge of the Supreme Court or a High Court and other members shall be either a sitting or retired Judge of the High Court or a Member of the Indian Legal Service who has held a post in Grade I of that Service for atleast three years, or has been a Member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent for atleast three years or has been a member of the Indian Economic Service and has held the post of Joint Secretary or equivalent for atleast three years. It is also proposed to be provided that no sitting Judge of the Supreme Court or a High Court shall be appointed as a Chairperson or a Member of the Appellate Tribunal except after consultation with the Chief Justice of India.

Clause 28 proposes that the Chairperson or other Member shall hold office for a term of five years. However, it is provided that no Chairperson shall hold office after attaining the age of sixty-eight years and Member after attaining the age of sixty-five years.

Clause 29 proposes that the salaries and allowances and the terms and conditions of the service of the Chairperson and Members would be as prescribed. It is provided that

the salary and allowances and other terms and conditions would not be varied to the disadvantage of such Chairperson or Member.

Clause 30 proposes that if there is a vacancy for reasons other than temporary absence then the Central Government may appoint another person as Chairperson or Member in accordance with the provisions of the proposed Act and the proceedings may be continued before the Appellate Tribunal from the Stage at which the vacancy is filled.

Clause 31 provides that the Chairperson or any other Member may resign his office by giving a notice in writing to the Central Government. It is also provided that such Chairperson or Member unless permitted by the Central Government to relinquish his office would continue to hold office until the expiry of three months from the date of receipt of notice or until a successor is appointed whichever is earlier. Sub-clause (2) provides that a Chairperson or any other person shall not be removed by office except by an order made by the Central Government on the grounds of proved misbehaviour or incapacity and after an enquiry made by a person appointed by the President.

Clause 32 provides the circumstances in which a Member can act as a Chairperson of the Tribunal. When there is a vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Members shall act as a Chairperson till the new incumbent is appointed. Sub-clause (2) provides that when the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall to discharge the functions of the Chairperson till the Chairperson resumes his duties.

Clause 33 proposes to empower the Central Government to provide the officers and employees of the Appellate Tribunal who shall discharge their function under the general superintendence of the Chairperson. The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be as prescribed.

Clause 34 seeks to provide for the procedure and power of the Appellate Tribunal.

Sub-clause (1) proposes that the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by principle of natural justice and subject to other provisions of the Act, the Appellate Tribunal shall have powers to regulate its own procedure. Sub-clause (2) proposes that the Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of summoning and reporting the attendance of any person and examining him on oath, requiring the discovery and production of documents, receiving evidence on affidavits, requisitioning any public record on document, issuing commissions for the examination of witness or document, reviewing its decision, dismissing a representation for default or deciding it *ex parte*, setting aside any order or in any other matter which may be prescribed. Sub-clause (3) provides that an order made by the Appellate Tribunal under the proposed Act shall be executable by the Appellate Tribunal, as a decree of civil court and for this purpose the Appellate Tribunal shall have all the powers of a civil court. Sub-clause (4) proposes that notwithstanding the provision of sub-clause (3) the Appellate Tribunal, may transmit any order made by it to a civil court having local jurisdiction for execution of the order as if it were a decree made by that Court. Sub-clause (5) proposes that all the proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

Clause 35 provides that the Chairperson may by notification make provisions regarding distribution of work of the Appellate Tribunal among the Benches.

Clause 36 provides to empower the Chairperson to transfer any case pending before one Bench for disposal to another Bench if any of the parties makes an application in

this behalf and after giving notice and hearing the parties. The Chairperson may transfer any case from one Bench to another on his own motion also.

Clause 37 provides that the decision of the Appellate Tribunal shall be by majority. It is also provided that if the Member of the Bench consisting of two Members differ in opinion than they shall state the point or points of difference and make a reference to the Chairperson who may hear the disputed points himself or make a reference to one or more other members of the Appellate Tribunal. The decision on such points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal including the members who have first heard the case.

Clause 38 seeks to grant the right of appellant to either appear in person or to take the assistance of authorised representative of his choice to present his case before the Appellate Tribunal. Sub-clause (2) Authorises the Central Government or the Director to authorise one or more authorised representatives or any of its officers to act as presenting officer. Every person so authorised may present the case with respect to appeal before the Appellate Tribunal.

Clause 39 proposes that the Chairperson, Members, other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Director and the officers subordinate to him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 40 seeks to provide that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of matter for which the Director, Adjudicating Authority, or the Appellate Tribunal is empowered under the proposed Act. It is also proposed that no injunction shall be granted by any court or any other authority in respect of action taken or to be taken in pursuance of any power conferred by or under this Act.

Clause 41 proposes that any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of decision or order of the Appellate Tribunal on any question of law. It is proposed to be provided that the High Court may extend the period for filing the appeal. It is explained that for the purposes of this section, High Court means the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gains. Where the Central Government is the aggrieved party, then the High Court within whose jurisdiction the respondent ordinarily resides or carries on business or personally works for gain, then that High Court shall have jurisdiction.

Clause 42 seeks to provide that the Central Government shall in consultation with the Chief Justice of the High Court designate by way of notification one or more court of session as Special Court for trial of offences punishable under clause 4 of this proposed Act. The area and the class or group of cases in respect of which such Special Court shall exercise their jurisdiction would also be specified in the notification. Sub-clause (2) proposes that if the accused is charged in respect of any other offence, then the special court may try the same as under the Code of Criminal Procedure, 1973.

Clause 43 proposes that notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence punishable under clause 4 of this Bill shall be triable only by the Special Court constituted for the area in which the offence has been committed. However, the Special Court may upon perusal of the police report of the facts of the case or the complaint made by an authority take cognizance of the offence for which the accused is committed to it for trial. Sub-clause (2) proposes that this clause shall not affect the special power of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973.

Clause 44 proposes that notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act shall be cognizable and no

person accused of an offence punishable for a term of more than three years imprisonment under this Act shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release and where the Public Prosecutor opposes the application and the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and is not likely to commit any offence while on bail. It is also proposed to provide that a person who is under the age of sixteen years or is a woman or is sick or infirm may be released on bail if the Special Court so directs. It is also proposed to be provided that the Special Court shall not take cognizance of any offence punishable under clause 4 except on a complaint in writing made by the Director or an officer authorised by the Central Government in this behalf. Sub-clause (2) specifically states that the limitation on granting of bail is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law being in force on granting of bail.

Clause 45 seeks to provide that the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for these purposes that Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court shall be deemed to be Public Prosecutors. This provision applies in situations save as otherwise provided in the proposed Act. It is also provided that the Central Government may appoint for any case or class of cases a Special Public Prosecutor. Sub-clause (2) proposes that to be appointed as a Public Prosecutor or a Special Public Prosecutor a person should have been in practice as an advocate for not less than seven years, under the Union or a State requiring special knowledge of law. Sub-clause (3) proposes that every person appointed as Public Prosecutor or a Special Public Prosecutor shall be deemed to be a Public Prosecutor within the meaning of section 2(u) of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

Clause 46 provides that High Court may exercise all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within its limits.

Clause 47 proposes that there will be the following classes of authority for the purposes of this legislation:—

- (i) Director or Additional Director or Joint Director
- (ii) Deputy Director
- (iii) Assistant Director
- (iv) Such other classes of officers as may be appointed.

Clause 48 proposes that the Central Government may appoint such persons as it thinks fit to be the authorities for the purpose of the proposed legislation. Sub-clause (2) proposes that the Central Government may authorise the Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director to appoint other authorities below the rank of an Assistant Director. Sub-clause (3) proposes that subject to such conditions and limitations as the Central Government may impose, an authority may exercise the powers and discharge the duties conferred or imposed on it under the proposed Act.

Clause 49 proposes to provide that for the purposes of clause 12, the Director shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of discovery and inspection; enforcing the attendance of any person, including any officer of a financial institution or a company, and examining him on oath; compelling the production of records; receiving evidence on affidavits, issuing commissions for examination of witness and documents; and any other matter which may be prescribed. Sub-clause (2) seeks to provide the Director, Additional Director,

Joint Director, Deputy Director or Assistant Director with the power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under the proposed Act. Sub-clause (3) proposes that all the persons summoned under sub-clause (2) shall be bound to attend in person or through authorised agents, as such officer may direct, and they shall also be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required. Sub-clause (4) proposes that every proceeding under sub-clause (2) and sub-clause (3) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code. Sub-clause (5) proposes to empower any officer mentioned in sub-clause (2) to impound and retain any records produced before him in any proceedings under this Act subject to the rules made in this regard by the Central Government. It is also proposed to be provided that an Assistant Director or a Deputy Director shall not impound the records without recording the reasons in writing, and will not retain the records for more than three months without obtaining the previous approval of the Director.

Clause 50 proposes to define the jurisdiction of authorities under the Act. These authorities shall exercise powers and perform functions as assigned to them by the Central Government by way of rules. Sub-clause (2) provides that the Central Government may have regard to all or any one of the territorial area, classes of persons, classes of cases and any other criterion specified by the Central Government in this behalf in issuing the direction or orders referred to in sub-section (1).

Clause 51 empowers the Central Government to issue directions, instructions and orders to the authorities and such authorities shall observe and follow such orders, instructions and directions of the Central Government. It is further sought to be provided that no such orders, instruction or directions shall be issued so as to require any authority to decide a particular case in a particular manner or so as to interfere with the discretion of the adjudicating authority in the exercise of his functions.

Clause 52 proposes that the Central Government may by a special or general order, ~~empower any officer of the Central Government or of the State Government~~ to act as authority under the proposed Act.

Clause 53 proposes to empower and require certain officers to assist the authorities in enforcement of the proposed Act. These officers are officers of the Customs and Central Excise Departments, officers appointed under section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Income-tax Authorities, officers of the Stock Exchange recognised under section 4 of the Securities Contracts (Regulation) Act, officers of the Reserve Bank of India, officers of Police, officers of Enforcement appointed under section 4 of the Foreign Exchange Regulation Act, 1973, officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 and such other officers of the Central Government, State Government, Local Authorities or banking companies as the Central Government may specify by notification.

Clause 54 defines certain expressions for the purposes of Chapter IX relating to reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property.

Clause 55 contains provisions empowering the Central Government to enter into bilateral agreements and arrangements with Government of any other country i.e., a contracting State, for exchange of information investigation, confiscation of illegally acquired property and prosecution of offences and related matters of Prevention of Money Laundering under mutual assistance. It is also proposed that such mutual assistance with a contracting State shall be subject to such conditions, exceptions or qualifications as are specified in the notification issued by the Central Government in the Official Gazette for application of the Chapter IX of this Act in relation to the contracting State.

Clause 56 contains provisions empowering the Special Court to issue a letter of request to a Court or an authority in the contracting State for investigation in a contracting State.

Clause 57 contains provisions relating to a letter of request received from a contracting State for investigation in India.

Clause 58 contains provisions for reciprocal arrangements regarding processes and assistance in securing transfer of persons in a contracting State when such persons are required in connection with investigation or inquiry in relation to an offence punishable under clause 4.

Clause 59 contains provisions for assistance in relation to property in respect of which an order of attachment or confiscation of any property under clause 7 has been made and such property is suspected to be in a contracting State. It further contains provisions for identifying unlawfully acquired property. It also contains provisions for attachment of property under this Chapter which provides that the provisions under Chapter III relating to attachment, adjudication, confiscation and vesting of property in Central Government and provisions of Chapter V relating to survey, searches and seizure would apply for attachment of property under this Chapter.

Clause 60 contains provisions in respect of letter of request, summons or warrant to be transmitted to a contracting State.

Clause 61 seeks to provide punishment in respect of Authorities and officers exercising powers under this Act if they conduct a search or arrest any person vexatiously or without reasonable ground of suspicion. For every such offence the authority or officers shall be liable on conviction for imprisonment of a term extending up to two years or fine up to fifty thousand rupees or both.

Clause 62 proposes to provide for punishment in the case of person wilfully and maliciously giving false information and so causing arrest or search of a person to be made under this Act. Such a person on conviction shall be liable for imprisonment of a term extending up to two years or fine up to fifty thousand rupees or both. Sub-Clause (2) proposes to provide for levy of penalty, from five hundred rupees to ten thousand rupees for each default specified therein.

Clause 63 proposes that no Court shall take cognizance of any offence under clauses 61 and 62 except with the previous sanction of the Central Government.

Clause 64 seeks to provide that the provisions of the Code of Criminal Procedure, 1973 shall apply in so far as it is not inconsistent with the provisions of this Act to arrest, searches, seizures, attachments, confiscations, investigations, prosecution and all other proceedings under the proposed Act.

Clause 65 provides that the Director or any other authority specified by him may furnish information received or obtained in performance of his duties under the proposed Act to any officer, authority or body performing any function under any Law relating to imposition of any tax, duties or cess or to dealings in foreign exchange or to prevent illicit traffic in Narcotic Drugs and Psychotropic Substances or any other officer Authority of body notified in the Official Gazette in this behalf. Such information is to be provided if in the opinion of the Director or the other Authority it is necessary for the purpose of enabling the officer, Authority or Body to perform his or its functions under that Law.

Clause 66 provide that no suit shall be brought in any civil court to set aside or modify any proceedings taken or order made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under this Act.

Clause 67 proposes that no notice, summons, order, document or other proceedings furnished or issued in pursuance of any provision of this Act shall be invalid or shall be deemed to be invalid merely by reasons of any mistake, defect or omission in such notice, summons, etc., if such notice summon, notice, etc., is in substance and effect in conformity with or according to the intent and purpose of the proposed Act.

Clause 68 proposes that when any fine imposed on any person under this Act is not paid within six months from the date of imposition then the Director or any other authorised officer may proceed to recover the amount from the said person as prescribed in schedule II of the Income-tax Act, 1961. The Director or authorised officer shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule.

Clause 69 proposes that where the offence under the proposed Act is committed by a company, every person who at the time of contravention was in incharge and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the contravention and shall accordingly be liable to be proceeded against and punished accordingly. It is proposed to provide that this-sub clause shall not render any such person liable for punishment, if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contraventions. Sub-Clause (2) proposes that where a contravention of any provision of the proposed Act has been committed by a company and it is proved that the contravention has taken place with the consent or connivance, or due to neglect on the part of any Director, Manager, Secretary or other Officer of the company, then such Director, etc., shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Clause 70 proposes that the proposed Act is to have over-riding effect over other laws that are in force for the time being.

Clause 71 provides for continuance of proceedings in the event of death or insolvency of the person whose property has been attached under clause 7.

Clause 72 empowers the Central Government to make rules by notification for the Official Gazette for carrying out the provisions of the proposed Act.

Sub-clause (2) enumerates the various matters in respect of which rules may be made.

Clause 73 seeks to provide that every rule made under the proposed Act shall be laid as soon as after it is made, before each House of Parliament.

Clause 74 proposes to empower the Central Government to remove any difficulty arising in giving effect to the provisions of the proposed Act, by way of passing an order. It is provided that no such order shall be made after the expiry of two years from the commencement of the proposed Act.

FINANCIAL MEMCRANDUM

Sub-clause (1) of clause 6 empowers the Central Government to appoint one or more persons not below the rank of Joint Secretary to the Government of India as Adjudicating or Adjudicating Authorities. Clause 24 empowers the Central Government to establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority. Clause 33 empowers the Central Government to provide the Appellate Tribunal with such officers and employees as the Central Government may deem fit. Sub-clause (1) of clause 48 empowers the Central Government to appoint such persons as it thinks fit to be authorities for purposes of proposed Act.

To begin with, it is proposed to constitute three Benches of the Appellate Tribunal at Delhi, Mumbai and Chennai. It is also proposed to appoint for each Bench of the Appellate Tribunal one officer of the rank of Joint Secretary to the Government of India, two Directors and four Assistant Directors with necessary staff and employees to assist each Bench. For establishing the Directorate of Money-laundering, it is proposed to appoint one Director in the rank of Special Secretary to Government of India and other authorities of appropriate ranks with necessary supporting staff and employees to assist the Director in discharge of his duties. It is also proposed to appoint four Adjudicating Authorities each in Delhi, Calcutta, Chennai and Mumbai with necessary officers, staff and employees to assist them in discharge of their duties.

The recurring expenditure for the aforesaid appointment in respect of salaries, wages and office expenses, etc., is estimated to be Rs. 14 crore per annum. The non-recurring expenditure in respect of office equipment, office furniture, electrical installation and motor vehicles, etc., is estimated to be Rs. 12 crores. The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 72 of the Bill empowers the Central Government to make rules, by notification in Official Gazette for carrying out the provisions of the proposed Act. Such rules may provide, *inter-alia* for forms in which records referred in the Bill may be maintained, the manner in which and the conditions subject to which the properties confiscated may be received and managed under sub-section (2) of the proposed section 9, the additional matter in respect of which the Adjudicating Authority may exercise the powers of a civil court under clause (f) of sub-section (1) of the proposed section 10, the nature and value of transactions in respect of which records shall be maintained under clause (a) of sub-section (1) of section 11, time within which the information of transactions shall be furnished under clause (b) of sub-section (1) of section 11, the manner in which records may be verified and maintained by banking companies, financial institutions and intermediaries under clause (c) of sub-section (1) of proposed section 11, the procedure and manner of maintaining and furnishing information under sub-section (1) of section 11 as required under proposed section 14, the rules relating to search and seizure under sub-section (1) of proposed section 16, the manner in which records authenticated outside India may be received under sub-section (2) of proposed section 21, the form of appeal and the fee for filing such appeal, under sub-section (3) of proposed section 25, the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under proposed section 29, the salaries and allowances and the conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of proposed section 33, the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of proposed section 34, the additional matters in respect of which the authorities may exercise powers of a civil court under clause (f) of sub-section (1) of proposed section 49, rules relating to impounding and custody of records under sub-section (5) of proposed section 49 and any other matter which is required to be or may be prescribed.

The matter in respect of which the aforesaid rules may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

G.S. MALHOTRA,
Secretary General.